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Judge Says Accused Spy May Offer Classified Evidence

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A federal judge in Alexandria has ruled that accused spy Richard Craig Smith will be allowed to present evidence, including classified information, to support his defense that he was actually working for the CIA when he provided the identities of six U. S. double agents to a Soviet KGB officer for \$11,000.

In his ruling, which shed light on the scope of Smith's defense, previously outlined in closed pretrial hearings, the judge also said that the bulk of the documents the defense has sought to introduce are inadmissible unless Smith's credibility is specifically challenged at his trial. Most of those documents relate to a now-defunct Honolulu investment firm alleged in lawsuits to have extensive ties to the CIA.

U.S. District Judge Richard L. Williams issued his ruling last week. The text of the full ruling has been withheld from public view, and a declassified version, with approximately six pages of classified information deleted, was made public yesterday.

The 34-page sanitized text rejects outright arguments by federal prosecutors that Smith should be prevented from presenting any classified information.

"The Court holds that Smith may testify to his version of events and present any other evidence, whether classified or not, tending to corroborate his defense," the judge wrote. "Smith's account of events is not necessarily internally inconsistent. In addition, there is independent evidence corroborating Smith's story. Thus, drawing all inferences in Smith's favor, a rational juror, based on the evidence Smith intends to adduce at trial, could legitimately entertain a reasonable doubt as to his guilt."

Smith, 40, a former Army counterintelligence specialist, is charged with conspiring with a Soviet KGB officer in Tokyo, transmitting national defense information, and three lesser espionage counts of disclosing classified information. If convicted of conspiracy or transmitting national defense information, he could be sentenced to life imprisonment.

His trial originally was scheduled to begin July 9, but was postponed indefinitely awaiting the judge's ruling on the amount and nature of

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classified information allowed as evidence at the trial. Federal prosecutors have until Monday to decide whether they plan to appeal the judge's decision to the Fourth U. S. Circuit Court of Appeals in Richmond.

Assistant U.S. Attorney Kenneth Melson declined to comment on the ruling.

Smith contends he was working, in effect, as a double agent to penetrate Soviet intelligence at the Soviet commercial compound in Tokyo. He contends his two CIA contacts gave him a Honolulu telephone number as his contact upon his return to the United States. Smith contends he subsequently found out that the number was for one of the telephone lines at the investment firm, Bishop, Baldwin, Rewald, Dillingham and Wong, which collapsed last year.

By April 1983, however, Smith says he had lost contact with his CIA operatives. In an attempt to find out what was happening to the

operation, he contacted his former bishop in the Mormon Church, also an FBI agent, with the hope that his situation would be relayed to the appropriate authorities at the CIA.

Smith, who was interviewed numerous times by the FBI and was eventually arrested by the FBI at Dulles International Airport four months ago, has said he did not tell law enforcement authorities the whole story because he did not know if such a disclosure would be a security violation. In addition, he has said he was convinced that the CIA would disavow any affiliation with his activities.

Federal prosecutors have maintained that it is inconceivable that Smith would not have disclosed the whole story to the FBI.

In his ruling, the judge said Smith's explanation "is not utterly devoid of plausibility . . . There is, moreover, some evidence that the CIA would have and did disavow any affiliation with him, either because it had decided to "cut him loose," or because it was ignorant of the activities of [Ken] White, [Danny] Ishida [the two alleged CIA operatives] and their alleged CIA superior.

"He has proffered evidence that the CIA agent who allegedly directed his double agent project often acted independently, without obtaining prior authorization. He further says that one of his witnesses will testify that the CIA does, in fact, disclaim any affiliation with double agents in certain circumstances," the judge wrote.